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ORIGINAL  
FILE

June 18, 1992

RECEIVED

JUN 19 1992

FEDERAL EXPRESS/BY HAND

Donna Searcy, Secretary  
Federal Communications Commission  
1919 M Street NW Room 222  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

Re: Healdsburg, CA MM Docket No. 92-111

Dear Ms. Searcy:

Enclosed for filing in the above-captioned proceeding are an original and six copies of Healdsburg Broadcasting, Inc.'s (a) Petition For Leave to Amend and Amendment and (b) Petition to Enlarge Issues.

Should you have any questions concerning Healdsburg Broadcasting, Inc., please contact the undersigned.

Very truly yours,

  
Peter A. Casciato

enclosures

cc: Michael & Julia Akana  
w/encls.

PAC:sc

No. of Copies rec'd  
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0-16

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC

In re Applications of )  
Deas Communications, Inc., )  
et al. )  
For A Construction Permit )  
For A New FM Station on )  
Channel 240A )  
Healdsburg, California )

MM Docket No. 92-111  
File Nos. BPH-910208MB  
et al.

RECEIVED

JUN 19 1992

To: Hon. Edward J. Kuhlmann,  
Administrative Law

Federal Communications Commission  
Office of the Secretary

PETITION TO ENLARGE ISSUES

Healdsburg Broadcasting, Inc. ("HBI"), by its attorney and pursuant to Section 1.229(b)(1) of the Commission rules, hereby moves to enlarge issues against Deas Communications, Inc. as follows:

To determine whether, in light of Sonoma County Board of Zoning Adjustments ("BZA") Resolution 90-013, and Sonoma County General Plan Zoning Ordinance Section PF-24, Deas has a reasonable assurance of the availability of its proposed transmitter site.

It is Commission policy that a site availability issue will be specified based on a lack of advance approval of local government authorities if a petitioner makes a reasonable showing that such approval is improbable. Salinas Broadcasting Limited Partnership, 5 FCC Rcd. 1613 (Rev. Bd. 1990); San Francisco Wireless Talking Machine Co., Inc., 47 RR2d 889 (1990). That necessary showing of reasonable improbability is as follows.

Attachment A hereto is the June 16, 1992 Declaration of Willard A. Carle, III, a partner in the law firm Anderson, Ziegler, Disharoon & Gray, who practices in the area of land use planning in Santa Rosa, CA, the county seat of Sonoma County. In

his declaration, Mr. Carle notes that he has reviewed the location of Deas' proposed transmitter site on Big Ridge Road in Dry Creek Valley located in Sonoma County and has also reviewed Sonoma County BZA Resolution No. 90-013 (attached to his declaration) which rejected a proposal of Fuller Jeffrey Broadcasting requesting virtually the same site for a proposed tower of 407 feet. Although noting the disparity in tower size between the Deas proposal (69 feet) and the Fuller-Jeffrey proposal (407 feet), Mr. Carle concludes that the

unlikelihood or improbability that Deas will be approved by the BZA is the result of the clear existing alternative FM radio broadcast sites buttressed by the fact that the proposed tower is to be located on the highest knoll on Big Ridge, and the predictable outpouring of opposition by the Dry Valley Creek Association.

Attachment A at p.1.

Mr. Carle's conclusion is buttressed by the BZA resolution that specifically rejects the Fuller Jeffrey proposal because of other available broadcast communications broadcast sites in the County, notably Mt. Jackson and Bradford Mountain. In addition, Mr. Carle notes the vigorous opposition of the Dry Creek Valley Association, which is made up of primarily residential and commercial property owners in the Dry Creek Valley, noting the location where Deas proposed tower will be placed on a "1429 foot knoll".<sup>1</sup> See Deas application Section V-B 2.(b); Attachment A at p.1, para.2. As Mr. Carle further states:

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<sup>1</sup>Attachment B hereto is the Sonoma County General Plan Zoning Ordinance Section PF-24, referenced in item 3 of BZA Resolution No. 90-013.

In addition, the Big Ridge location is the most problematic in the entire valley. The ridge has been subdivided much more than surrounding ridges. The result is that there are an inordinately high number of property owners. In the Fuller Jeffrey Broadcasting application, this led to a petition of 249 property owners and numerous letters, all in opposition. Several of the surrounding ridges are owned by one or two property owners and, therefore, may not generate such substantial opposition. My experience with many land use decisions before BZA is that this kind of opposition is the death knell to any application.

Attachment A at p.1.

Indeed, the BZA Resolution relied heavily on two other independent reasons for rejection of the like kind broadcast tower:

1. The applicant failed to adequately respond to the criteria established in the General Plan for new tower sites, i.e. prove that the new tower would serve a demonstrated public need, explain why use of the existing tower facility is infeasible, minimize impacts of scenic resources and analyze alternative sites.

2. Testimony at the public hearing was taken that the establishment, maintenance or operation of the tower would be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood and be detrimental or injurious to property and improvements in the neighborhood and the general welfare of the area.

BZA Resolution at p.1. Indeed, Attachment C hereto is a January, 1990 "Healdsburg Tribune" article noting the rejection of the Fuller-Jeffrey proposal in the face of the Dry Creek Valley Association based on the fact that it could pose a "fire hazard" and quotes one resident as saying:

I can't think of anyone in Sonoma County that is for this. This proposal has no redeeming value to offset the negative impact it would have on the environment.

Attachment C at p.2.

Clearly, the Sonoma County BZA Resolution, the Sonoma County

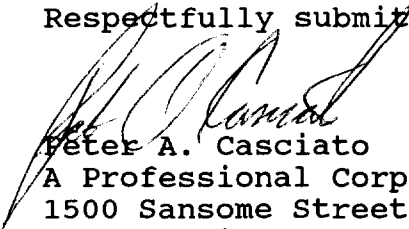
General Plan PF-2u and the "Healdsburg Tribune" article indicate that there is a reasonable improbability that Deas has, or ever has had, a reasonable assurance of its proposed site and that this state of affairs will not change in the future.<sup>2</sup> As a result, the requested site availability issue should be added.

If the issue is added, HBI will request the following discovery:

(a) all documents and correspondence of Deas, its principals, consultants, engineers, agents and attorneys that relate or pertain to its proposed transmitter site; and

(b) the depositions of all Deas principals, consultants, agents and engineers involved in selecting the transmitter site and compliance with any local requirements.

Respectfully submitted,



Peter A. Casciato  
A Professional Corporation  
1500 Sansome Street Suite 201  
San Francisco, CA 94111  
(415) 291-8661

June 18, 1992

Counsel to Healdsburg  
Broadcasting, Inc.

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<sup>2</sup>A petition to deny, as noted in the Hearing Designation Order in this proceeding, raised transmitter site issues against Deas and two other applicants in this proceeding, which did not file Notices of Appearances. However, that petition to deny did not include BZA 90-013, the declaration of Mr. Carle, or (on information and belief) the newspaper article noted below.

HBI Attachment A

DECLARATION OF WILLARD A. CARLE III

I, Willard A. Carle III, hereby declare as follows:

1. I am a partner in the law firm of Anderson, Zeigler, Disharoon & Gray, practicing in the area of land use planning in Sonoma County, California, with my offices located in the Sonoma County seat, Santa Rosa, California.

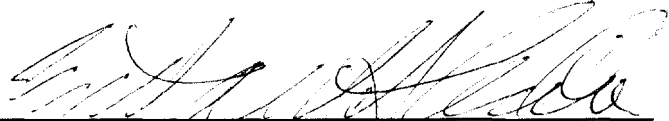
2. I have reviewed the proposed location of Deas Communications, Inc.'s proposed 69-foot tower on a 1429-foot knoll on Big Ridge Road, the highest point of Big Ridge, 7.81 kilometers WNW of Healdsburg, California, on the property of Lucy Diggs.

3. I have also reviewed the entire Sonoma County file concerning the 1989 proposal and Board of Zoning Adjustments ("BZA") Resolution No. 90-013 (attached hereto) rejecting the proposal of Fuller Jeffery Broadcasting to place a 407-foot height radio transmitter tower on Big Ridge Road, Healdsburg, California, and discussed the matter with planning staff.

4. The BZA rejected the Fuller Jeffery proposal for five reasons (see BZA resolution). At least two of those reasons are applicable to the Deas proposed location in the Healdsburg, California proceeding, MM Docket No. 92-111. First, there are other recognized existing FM radio transmitter sites available in Sonoma County, which include Mt. Jackson and Bradford Mountain. Second, the Dry Creek Valley Association, whose make-up primarily is residential and commercial property owners in Dry Creek Valley, share a serious concern that there be no development in or around the valley that adversely impacts its scenic qualities, which is of primary importance to the wine and tourist industry. In addition, the Big Ridge location is the most problematic in the entire valley. The ridge has been subdivided much more than surrounding ridges. The result is that there are an inordinately high number of property owners. In the Fuller Jeffery Broadcasting application, this led to a petition of 249 property owners and numerous letters, all in opposition. Several of the surrounding ridges are owned by one or two property owners and, therefore, may not generate such substantial opposition. My experience with many land use decisions before BZA is that this kind of opposition is the death knell to any application.

5. In my opinion, it is improbable if not impossible for Deas to get approval from the BZA for its proposed site. It is true that the proposed Deas tower is not the same height as that proposed by Fuller Jeffery, and that Deas may be able to provide some mitigation of the visual impact as a result. However, the unlikelihood or improbability that Deas will be approved by the BZA is the result of the clear existing alternative FM radio broadcast sites buttressed by the fact that the proposed tower is to be located on the highest knoll on Big Ridge, and the predictable outpouring of opposition by the Dry Creek Valley Association.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Santa Rosa, California, on June 16, 1992.



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Willard A. Carle III

RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS, COUNTY OF  
SONOMA, STATE OF CALIFORNIA, EXEMPTING THE PROJECT FROM CEQA  
FOR THE PURPOSE OF DENIAL AND DENYING THE USE PERMIT REQUEST  
BY FULLER JEFFREY BROADCASTING FOR A 407 FOOT HIGH RADIO  
TRANSMITTER TOWER

WHEREAS, the Sonoma County Board of Zoning Adjustments has considered the Use Permit application by Fuller Jeffrey Broadcasting requesting a 407 foot high radio transmitter tower located at 2300 Big Ridge Road, Healdsburg, APN 090-090-25 and 111-130-14, zoned A1 (Primary Agriculture), BS, Table 40, Supervisorial District No. 4, and

WHEREAS, In accordance with the provisions of law, the Sonoma County Board of Zoning Adjustments did conduct a public hearing on January 25, 1990, on said application at which time all interested persons were given an opportunity to be heard thereon, and

WHEREAS, said Board does make the following specific findings relative to this particular application:

1. There is no mitigation for the visual impact that the project will have;
2. There are other sites available in the County, including the applicant's existing location, that could have less impact.
3. Until the County adopts siting and design guidelines for transmission towers in accordance with General Plan Policy PF-2U, it is premature to approve towers which exceed existing tower heights and continue the trend toward tower dispersal.
4. The applicant failed to adequately respond to the criteria established in the General Plan for new tower sites, i.e. prove that the new tower would serve a demonstrated public need, explain why use of the existing tower facility is infeasible, minimize impacts on scenic resources and analyze alternative sites.
5. Testimony at the public hearing was taken that the establishment, maintenance or operation of the tower would be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood and be detrimental or injurious to property and improvements in the neighborhood and the general welfare of the area.

NOW, THEREFORE BE IT RESOLVED that the Sonoma County Board of Zoning Adjustments in regular session assembled this 25th day of January, 1990, hereby exempts the project from CEQA for the purpose of denial and denies the Use Permit request by Fuller Jeffrey Broadcasting for a 407 foot high radio transmitter tower.



AND BE IT FURTHER RESOLVED that the Sonoma County Board of Zoning Adjustments action shall be final on the 13th day after the date of the resolution unless an appeal is taken.

THE FOREGOING RESOLUTION was introduced by Commissioner Dawson, who moved its adoption, seconded by Commissioner Marquardt, and adopted on roll call by the following vote:

Commissioner Mills	Aye
Commissioner Dawson	Aye
Commissioner Marquardt	Aye
Commissioner Perry	Aye
Commissioner Nelson	Aye

AYES: 5      NOES: 0      ABSENT: 0      ABSTAIN: 0

WHEREUPON, the Chairman declared the above and foregoing resolution duly adopted; and

SO ORDERED.

- ~~PF-2s: Public utility facilities other than transmission line corridors may be designated as "Public/Quasi-Public" on the land use map. Allow consideration of minor facilities in any land use category where they are compatible with neighborhood character and preservation of natural and scenic resources.~~
- PF-2t: Review proposals for new transmission lines or acquisition of easements for new transmission lines for consistency with general plan policies. Request wherever feasible that such facilities not be located within areas designated as community separators or biotic resource areas. Give priority to use of existing utility corridors over new corridors.
- PF-2u: Review proposals for new radio, telephone or other communication and transmission towers for consistency with general plan policies. Prepare siting and design guidelines for such facilities. Until these guidelines are adopted, require that proposals for new tower sites:
- a) serve a demonstrated public need,
  - b) include a statement explaining why use of existing tower facilities is infeasible,
  - c) minimize, to the extent feasible, impacts on biotic and scenic resources, and
  - d) include an analysis of alternative sites, explaining why the proposed site results in fewer or less severe environmental effects than feasible alternative sites.
- ~~PF-2v: Consider requiring the undergrounding of new electrical transmission and distribution lines where appropriate in designated open space areas and in selected urban areas. Where feasible and under the Public Utility Commission (PUC) rules, convert existing overhead lines to underground facilities in urban areas.~~
- PF-2w: Encourage consolidation of multiple utility lines into common utility corridors wherever practicable.
- PF-2x: Utilize development fees to require that new development pay for its share of needed infrastructure as identified in existing and future Capital Improvement Plans prepared by the county.

Herald Tribune 1/1/90

**TOWERS NEED NOT APPLY**

# Radio pole plans shot down

by DAN MURPHY  
Tribune Staff Writer

The radio station which calls itself "The Heat" got a cool reception at a Sonoma County Board of Zoning Adjustments hearing last Thursday evening.

Landowners from the Dry Creek area came out in force to deliver a response to the idea of placing a 407-foot radio tower on a ridge on Big Ridge Road: Not in our valley.

And the BZA board listened, voting 5-0 to reject the proposal by Fuller Jeffrey Broadcasting, owners of FM-radio station KHTT. The FM station was formerly KREO.

Bob Gaskill of Brelje and Race Planning and Engineering of Santa Rosa, represented the radio station at the hearing. In an attempt to allay the residents' main concern regarding the proposal, Gaskill claimed that the tower would improve the station's broadcast capability to its Santa Rosa area listeners without creating a negative visual impact on the area. "The tower's visibility would be mitigated by several factors," he said. "There's tree coverage in the area so you wouldn't see the whole tower."

He also claimed that flashing lights on the tower, which would be required by the Federal Aviation Administration, would not be a problem as well. Some of the alternatives, he said, included shielding the lights from the ground or installing white lights with variable intensity.

In addition, he told the board that Geyser Peak, which



DAN MURPHY

**NO TOWER** - Dr. Forrest Davis (l) and Arlene Naschke stand on a hill off Chamise Road overlooking the proposed site for a radio tower in Dry Creek Valley. Residents in the area successfully argued against the idea at a Board of Zoning Adjustments hearing last week.

houses the station's present tower, is inadequate because it no longer provides sufficient "broadcast orientation" to its listeners.

However, the residents who spoke, many of whom represented community organizations such as the Dry Creek Valley Association, said the tower would pose a fire hazard to

their homes and they felt a bad precedent would be set if it were approved. The proposed site is bordered by Chamise and Brack Roads, which are private and would pose a significant obstacle to the California Department of Forestry (CDF) in the event of a fire, they said.

(Please turn to page 12)

# RADIO

(from page one)

Russ Messing responded to the assertion by Gaskill that the tower, if constructed, would serve as a "reference location" to aid CDF in fighting fires.

"My sense is that the fire would be a good reference point to start with," he said.

Neighbors in the affected area, he said, want peace and serenity, not outsiders coming into the area for commercial purposes.

Resident Quin Wilson echoed many sentiments expressed at the meeting when he said the proposal threatened their secluded way of life.

"I can't think of anyone in Sonoma County that is for this," he said. "This proposal has no redeeming value to offset the negative impact it would have on the environment."

Other residents claimed that the Fuller Jeffrey plan would just be a "foot in the door" toward letting other ra-

dio stations erect towers in the area.

Dr. Forrest Davis, who moved to a house on Chamise Road a month ago, ignited the audience with his comments to the board. He claimed the tower, if constructed, would sit directly across from his front door.

"I used to live in Los Angeles so I know all about noise pollution and the stress it creates," he told the board. "And I did not move to this area to have strobe lights put into my living room."

The audience roared.

BZA board member Donald Marquardt summed up the feeling of the board shortly before it rejected the proposal when he said, "I can't support the applicant on this because there is not enough evidence to support that they need a new site."

After the meeting, Gaskill said he will deliberate with Fuller Jeffrey officials on whether to formally appeal

the ruling to the Board of Supervisors. They had twelve business days after the Thursday meeting to decide.

"Oh, they'll come back," claimed Davis after the meeting. "They are like a bad dream that never goes away. They'll appeal this thing."

He said Dry Creek residents would contact the Planning Department and Board of Supervisors to express their concern over the prospect of Fuller Jeffrey appealing the BZA decision.

Hank Gonzales, vice president of special projects for Fuller Jeffrey, said the station would decide whether to appeal the ruling this week, but admitted it was unlikely a unanimous vote would be overturned.

"Our engineers have told us that a site lower down the (Dry Creek) Valley might work better," he said. "So maybe we will try that one next time."

CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

On June 18, 1992, I served the attached of Petition to Enlarge Issues of Healdsburg Broadcasting, Inc. by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be placed in the United States Post Office mail box at San Francisco, California, addressed to the following listed people:

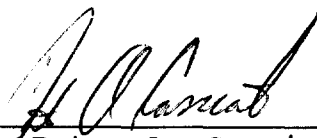
Hon. Edward J Kuhlmann  
Administrative Law Judge  
Federal Communications Commission  
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Washington, DC 20036  
(Federal Express\By Hand)

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\_\_\_\_\_  
Peter A. Casciato